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8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11
12 In the Matter of the Accusation Against:

13 **JOHN WILLIAM KELLEY**
1392 Arthur Avenue
14 **Riverside, CA 92501**

15 **Pharmacy Technician Registration No. TCH**
16 **10443**

17 Respondent.

Case No. 4394

A C C U S A T I O N

18
19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about November 8, 1993, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 10443 to John William Kelley (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on December 31, 2012, unless renewed.
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28

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 4300, subdivision (a) of the Code states "Every license issued may be suspended or revoked."

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,

1 and the board may inquire into the circumstances surrounding the commission of
2 the crime in order to fix the degree of discipline or to determine if the conviction is
substantially related to the qualifications, functions, and duties of the licensee in
question.

3 As used in this section, "license" includes "certificate," "permit,"
4 "authority," and "registration."

5 9. Section 4301 of the Code states:

6 The board shall take action against any holder of a license who is guilty of
7 unprofessional conduct or whose license has been procured by fraud or
8 misrepresentation or issued by mistake. Unprofessional conduct shall include, but
is not limited to, any of the following:

9

10 (h) The administering to oneself, of any controlled substance, or the use of any
11 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
12 dangerous or injurious to oneself, to a person holding a license under this chapter, or
to any other person or to the public, or to the extent that the use impairs the ability of
the person to conduct with safety to the public the practice authorized by the license.

13

14 (k) The conviction of more than one misdemeanor or any felony involving
15 the use, consumption, or self-administration of any dangerous drug or alcoholic
beverage, or any combination of those substances.

16

17 (l) The conviction of a crime substantially related to the qualifications,
18 functions, and duties of a licensee under this chapter. The record of conviction of
19 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
States Code regulating controlled substances or of a violation of the statutes of this
20 state regulating controlled substances or dangerous drugs shall be conclusive
evidence of unprofessional conduct. In all other cases, the record of conviction
21 shall be conclusive evidence only of the fact that the conviction occurred. The
board may inquire into the circumstances surrounding the commission of the
22 crime, in order to fix the degree of discipline or, in the case of a conviction not
involving controlled substances or dangerous drugs, to determine if the conviction
23 is of an offense substantially related to the qualifications, functions, and duties of a
licensee under this chapter. A plea or verdict of guilty or a conviction following a
24 plea of nolo contendere is deemed to be a conviction within the meaning of this
provision. The board may take action when the time for appeal has elapsed, or the
25 judgment of conviction has been affirmed on appeal or when an order granting
probation is made suspending the imposition of sentence, irrespective of a
26 subsequent order under Section 1203.4 of the Penal Code allowing the person to
withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
27 the verdict of guilty, or dismissing the accusation, information, or indictment.
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2 **REGULATORY PROVISIONS**

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4 10. California Code of Regulations, title 16, section 1769, states:

5 (b) When considering the suspension or revocation of a facility or a
6 personal license on the ground that the licensee or the registrant has been
7 convicted of a crime, the board, in evaluating the rehabilitation of such person and
8 his present eligibility for a license will consider the following criteria:

- 9 (1) Nature and severity of the act(s) or offense(s).
- 10 (2) Total criminal record.
- 11 (3) The time that has elapsed since commission of the act(s) or offense(s).
- 12 (4) Whether the licensee has complied with all terms of parole, probation,
13 restitution or any other sanctions lawfully imposed against the licensee.
- 14 (5) Evidence, if any, of rehabilitation submitted by the licensee.

15 11. California Code of Regulations, title 16, section 1770, states:

16 For the purpose of denial, suspension, or revocation of a personal or facility
17 license pursuant to Division 1.5 (commencing with Section 475) of the Business
18 and Professions Code, a crime or act shall be considered substantially related to
19 the qualifications, functions or duties of a licensee or registrant if to a substantial
20 degree it evidences present or potential unfitness of a licensee or registrant to
21 perform the functions authorized by his license or registration in a manner
22 consistent with the public health, safety, or welfare.

23 **COST RECOVERY**

24 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request
25 the administrative law judge to direct a licentiate found to have committed a violation or
26 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
27 and enforcement of the case.

28 **FIRST CAUSE FOR DISCIPLINE**

(November 30, 2011 Criminal Conviction for DUI on August 30, 2011)

13. Respondent has subjected his license to discipline under sections 490 and 4301,
subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the
qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

1 a. On or about November 30, 2011, in a criminal proceeding entitled *People of the State*
2 *of California v. John William Kelley*, Riverside Superior Court, case number RIM1116157,
3 Respondent was convicted on his plea of guilty to violating Vehicle Code section 23152(a),
4 driving under the influence, and Vehicle Code section 23152(b), driving with a blood alcohol
5 content of .08 percent or more, both misdemeanors. Respondent also admitted and the Court
6 found true an enhancement under Vehicle Code section 23578, for having a blood content of .15
7 percent or more.

8 b. The circumstances surrounding the conviction are that on or about August 30, 2011 at
9 approximately 6:05 p.m. an officer from the Riverside Police Department was dispatched to a hit
10 and run traffic collision in Riverside. The witness who reported the incident to police informed
11 the officer that while she was traveling southbound on Magnolia Avenue, she witnessed two
12 vehicles collide at the intersection of School Circle and Magnolia. After the collision, the witness
13 observed one of the vehicles leave the scene. The witness followed that vehicle and pointed it out
14 to the officer when the officer arrived. Respondent was identified as the driver of the vehicle that
15 fled the scene.

16 c. The officer observed that Respondent's vehicle sustained damage to its front end.
17 The officer instructed Respondent, who was sitting in the driver's seat, to get out of the vehicle.
18 The officer observed that Respondent had a difficult time walking and keeping his balance, that
19 Respondent had an odor of an alcoholic beverage on his breath, that Respondent's eyes were red
20 and watery, and that his speech was slurred. Respondent admitted to the officer that he consumed
21 two drinks. The officer administered Field Sobriety Tests, which Respondent failed. The officer
22 then placed Respondent under arrest for driving under the influence. Respondent's blood alcohol
23 content was .21 percent.

24 d. As a result of the conviction Respondent was ordered to serve 36 months summary
25 probation, required to serve 20 days in custody, ordered to pay all fines, fees and restitution,
26 required to enroll and complete the MADD course, the Desert Drug Court Program, and the nine
27 month First Offender DUI program.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Use of Alcoholic Beverages in a Manner Dangerous & Injurious to Oneself & the Public)**

3 14. Respondent has subjected his license to disciplinary action under section 4301,
4 subdivision (h) of the Code in that on or about August 30, 2011, Respondent drove a vehicle
5 while under the influence of an alcoholic beverage, which posed a serious risk of injury and/or
6 death to himself and to the public, as detailed in paragraph 13, above, and which are incorporated
7 herein by reference.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Multiple Convictions Involving the Use of Alcoholic Beverages)**

10 15. Respondent has subjected his license to disciplinary action under section 4301,
11 subdivision (k) of the Code in that on Respondent was convicted in two separate cases on charges
12 involving the consumption of alcoholic beverages. The circumstances are as follows:

13 a. Respondent was convicted in 1987 on his plea of guilty for driving under the
14 influence of alcohol. This conviction was disclosed on Respondent's application for licensure as
15 a pharmacy technician.

16 b. Respondent was convicted as of driving under the influence and driving with a blood
17 alcohol content of .08 percent or more, both misdemeanors, on November 30, 2011, as detailed in
18 paragraph 13, above, which is incorporated here by reference.

19 **DISCIPLINARY CONSIDERATIONS**

20 16. Pursuant to title 16, California Code of Regulations, section 1769(b)(2), to determine
21 the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that before
22 Respondent was licensed as a pharmacy technician, Respondent was convicted in 1991 on his
23 plea of guilty for felony reckless driving. This conviction was disclosed on Respondent's
24 application for licensure as a pharmacy technician.

25 17. Pursuant to title 16, California Code of Regulations, section 1769(b)(2), to determine
26 the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or
27 about December 18, 2004, the Board of Pharmacy issued a Letter of Admonishment to
28 Respondent for the following conduct: On or about October 23, 2003, in criminal proceedings

1 entitled *The People of the State of California v. John William Kelley*, in Riverside Superior Court,
2 case number RIM442875, Respondent pled guilty to violating Health and Safety Code section
3 11377(a), possession of a controlled substance, methamphetamine. The Court granted deferred
4 entry of judgment pursuant to Penal Code section 1000, and the case was dismissed on April 29,
5 2005.

6 **PRAYER**

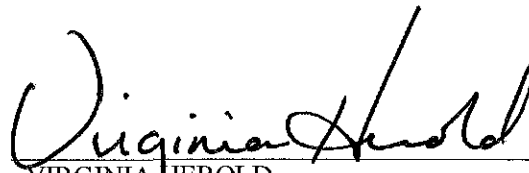
7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8 and that following the hearing, the Board of Pharmacy issue a decision:

9 1. Revoking or suspending Pharmacy Technician Registration Number TCH 10443,
10 issued to John William Kelley;

11 2. Ordering John William Kelley to pay the Board of Pharmacy the reasonable costs of
12 the investigation and enforcement of this case, pursuant to Business and Professions Code section
13 125.3;

14 3. Taking such other and further action as deemed necessary and proper.

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16
17 DATED: 12/14/12


VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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